

1 THE HONORABLE MARSHA J. PECHMAN
2
3
4
5
6
7

8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 AMAZON.COM, LLC,

12 Plaintiff,

No. 10-cv-00664-MJP

13 V.
14 KENNETH R. LAY, in his official capacity
15 as Secretary of the North Carolina Department
of Revenue,

16 Defendant.

17
18
19
20
21
22
23
24
25
26
27
28

**THIRD DECLARATION OF
H. ALAN WOODARD IN SUPPORT
OF NORTH CAROLINA MOTION
TO DISMISS**

I, H. Alan Woodard, do hereby depose and say as follows:

1. I have previously provided two Declarations in this matter and provide this Third
Declaration in Support of North Carolina's Motion to Dismiss. The information provided in the
previous Declarations is incorporated herein by reference.

2. Internet retailers such as Amazon are costing the states billions of dollars in lost
sales tax revenue. According to some estimates, states are losing about \$23 billion a year in
uncollected sales tax on Internet purchases nationwide. *See Exhibit 1.* A study by Donald

Bruce, William F. Fox and LeAnn Luna estimates that North Carolina will lose \$162 million in 2010 from untaxed online purchases (using the more conservative estimate; the study's higher estimate puts this number at \$186 million for 2010). *State and Local Sales Tax Revenue Losses from E-Commerce*, 52 State Tax Notes 537 (May 18, 2009).

Because the use tax is largely ignored by purchasers when sales taxes are not collected by the seller, only a small portion of the applicable use tax is collected. Indicative of the enormity of the problem, North Carolina purchasers paid \$5 million in total use taxes for the year 2008. *See Exhibit 1*. The study estimated that \$145 million was due as a result of online transactions for that year. The North Carolina Department of Revenue has preliminarily estimated that approximately \$50 million in sales or use taxes remains unpaid by Amazon or its customers for the audit period (August 1, 2003 through June 30, 2009). This figure does not include interest or penalties. Because the base of the sales and use tax is the same (the purchase price), the same amount of tax would be due whether a sales tax or a use tax were assessed on Amazon's transactions with its North Carolina customers.

Amazon's aggressive tax avoidance policies are well-known in the state tax community. For example, *see Exhibits 2 through 4*.

The filing of this lawsuit by Amazon claiming a violation of First Amendment rights has occasioned much national attention and discussion. For example, *see Exhibits 5 through 7*.

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the
2 United States that the foregoing is true and correct to the best of my knowledge, and that the
3 foregoing declaration was executed on August 6, 2010.

4 By:

5 H. Alan Woodard

6 H. Alan Woodard, Director Examination Division

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28